

# EXHIBIT 115

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Page 1

Erica J. Bever

Volume I

Pages 1 to 363

Exhibits 1 to 23

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

- - - - -x

STUDENTS FOR FAIR ADMISSIONS,  
INC.,

Plaintiff,

vs.

PRESIDENT AND FELLOWS OF  
HARVARD COLLEGE (HARVARD  
CORPORATION),

Defendant.

- - - - -x

DEPOSITION OF ERICA J. BEVER, a witness  
called on behalf of the Plaintiff, taken pursuant to  
the Federal Rules of Civil Procedure, before  
Alexander K. Loos, Registered Diplomate Reporter and  
Notary Public in and for the Commonwealth of  
Massachusetts, at the Offices of WilmerHale, 60  
State Street, Boston, Massachusetts, on Thursday,  
July 13, 2017, commencing at 9:00 a.m.

PRESENT:

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Reported By: Alexander K. Loos

Job No: 127040

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Page 80

1 ERICA J. BEVER

2 MS. ELLSWORTH: Objection.

3 A. I don't know.

4 Q. And who do you remember bringing it up?

5 A. I don't recall.

6 Q. Okay. Do you remember whether it was the  
7 topic of discussion between yourself and Dean  
8 Fitzsimmons at that time?

9 A. I do not.

10 Q. Okay. Do you remember whether it was the  
11 topic of discussion between yourself and  
12 Ms. Driver-Linn at that time?

13 A. I do not.

14 Q. Do you remember whether this was the topic  
15 of discussion with Ms. Yong at that time?

16 A. I do not.

17 Q. Okay. And when you say you don't remember,  
18 you're saying you don't remember one way or the  
19 other: It may have been; it may not have been?

20 MS. ELLSWORTH: Objection.

21 A. It varies.

22 Q. When you say "it varies," what do you mean?

23 MS. ELLSWORTH: Objection.

24 A. I would not have discussed it with  
25 Elizabeth Yong.

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Page 81

1 ERICA J. BEVER

2 Q. And why not?

3 A. I did not work with her at that time.

4 Q. Okay. With respect to Dean Fitzsimmons or  
5 Ms. Driver-Linn, can you say one way or the other  
6 whether you discussed it with them at that time?

7 A. I'm fairly certain I did not.

8 Q. And why are you fairly certain you did not?

9 A. I was on maternity leave.

10 Q. From when to when?

11 A. From October of 2012 through January of  
12 2013.

13 Q. Okay. Do you recall having any discussions  
14 with anybody about the article when you returned  
15 from maternity leave?

16 A. I do not.

17 Q. And when I say "do you recall," I'm talking  
18 about discussions at any time, not just when you  
19 returned from maternity leave. Now let me expand  
20 the question to clarify.

21 Do you recall talking about the article or  
22 it's claims about bias in the admissions process at  
23 Harvard at any point during your time at OIR?

24 MS. ELLSWORTH: Objection.

25 I'll remind the witness not to disclose the

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Page 82

1 ERICA J. BEVER

2 contents of communications with counsel or taken at  
3 the direction of counsel in responding to the  
4 question.

5 If you can otherwise answer, you may do so.

6 A. I do not recall.

7 Q. Do you remember talking about this with  
8 counsel or at the direction of counsel before the  
9 fall of 2014?

10 MS. ELLSWORTH: Objection.

11 I'll direct the witness not to answer the  
12 question.

13 MR. STRAWBRIDGE: I'm sorry. The question  
14 about timing, I just want to be clear about the  
15 boundary of your instruction.

16 You're instructing her not to say whether  
17 or not she discussed it with counsel at any point in  
18 time before 2014?

19 MS. ELLSWORTH: Can you repeat your  
20 question?

21 BY MR. STRAWBRIDGE:

22 Q. Did you have a discussion with counsel or  
23 at the direction of counsel about the claims made in  
24 Ron Unz's article before the fall of 2014?

25 MS. ELLSWORTH: I'm instructing the witness

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Page 83

1 ERICA J. BEVER

2 not to answer the question.

3 Q. Are you going to follow that instruction?

4 A. Yes.

5 Q. Sitting here today, do you recall any  
6 analysis that you performed in response to the  
7 claims made in the Ron Unz article?

8 A. I do not.

9 Q. Did you review any such analysis in  
10 preparation for your deposition?

11 MS. ELLSWORTH: Objection.

12 A. Yes.

13 Q. Okay. Do you have any -- and what did you  
14 review?

15 A. Presentations put together around the time.

16 Q. And looking at those presentations doesn't  
17 refresh your recollection about the work that you  
18 may have done?

19 MS. ELLSWORTH: Objection.

20 A. It did not.

21 Q. Based on your preparation for this  
22 deposition, what analysis or presentations did you  
23 do related to the Ron Unz article?

24 MS. ELLSWORTH: Objection.

25 A. I do not know.

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Page 85

1 ERICA J. BEVER

2 A. I do.

3 Q. And who is Michael Smith?

4 A. He's the dean of the faculty of arts and  
5 sciences.

6 Q. And did you ever have occasion during your  
7 time at OIR to meet with Michael Smith?

8 A. I did.

9 Q. Okay. And what topics did you meet with  
10 Michael Smith about?

11 A. Financial aid.

12 Q. And specifically what with respect to  
13 financial aid?

14 A. Financial aid policy.

15 Q. What policy?

16 A. The affordability initiative.

17 Q. And when you say the for the affordability  
18 initiative, what are you referring to?

19 A. I am referring to the policy that reduced a  
20 family's contribution to zero to ten percent of  
21 their income for families up to 180 -- \$180,000 in  
22 2008.

23 Q. Did you do a lot of work on that question?

24 MS. ELLSWORTH: Objection.

25 A. I did.

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Page 86

1 ERICA J. BEVER

2 Q. Okay. And what was -- what was the scope  
3 of your analysis?

4 A. Could you clarify?

5 Q. Yeah. You said -- you said it was an  
6 analysis of the family contribution being reduced  
7 from zero to ten percent, or within that range?

8 What specifically were you analyzing?

9 A. We looked at several -- many things.

10 Q. Just give me an example.

11 A. We looked at how much families were paying  
12 across our income distribution.

13 Q. Okay. What else do you remember looking  
14 at?

15 A. The cost of attendance at Harvard and  
16 peers.

17 Q. Okay. Anything else?

18 A. Yield rates by income.

19 Q. All right.

20 What else?

21 A. The share of students on aid.

22 Q. Do you remember anything else about that  
23 analysis?

24 A. Other institutions' financial aid policies.

25 Q. Can when was this analysis performed?



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Page 87

1 ERICA J. BEVER

2 2008, you said?

3 A. From June -- July 2007 through the  
4 announcement in December of 2007. And then  
5 periodically annually every year since.

6 Q. Can you explain why you remember all those  
7 aspects of that analysis going back to 2007 but you  
8 don't remember any of the analysis you did with  
9 respect to the Ron Unz article and the claims it  
10 makes about Asian discrimination at Harvard?

11 MS. ELLSWORTH: Objection.

12 A. The affordability initiative analysis was  
13 significant, a significant work product for me.

14 Q. And what made it a significant work  
15 product?

16 A. It took many months. I have continued to  
17 revise exhibits annually over the last 10 years, and  
18 it went to the Harvard Corporation.

19 Q. Do you know how many months you spent on  
20 analysis of the claims that were made in the Unz  
21 article?

22 MS. ELLSWORTH: Objection.

23 A. I do not.

24 Q. Do you know whether that analysis was ever  
25 provided to Michael Smith?

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Page 88

1 ERICA J. BEVER

2 MS. ELLSWORTH: Objection.

3 A. I do not.

4 Q. Do know whether that analysis was ever  
5 provided to Drew Faust?

6 A. I do not.

7 Q. Do you know whether that analysis was ever  
8 provided to Rakesh Khurana?

9 MS. ELLSWORTH: Objection.

10 A. I do not.

11 MR. STRAWBRIDGE: I'm going to ask the  
12 reporter to mark that as Exhibit 2.

13 (Document marked as Bever  
14 Exhibit 2 for identification)

15 MS. ELLSWORTH: Do you have another copy?

16 MR. CONNOLLY: Yeah. If you want it.

17 BY MR. STRAWBRIDGE:

18 Q. If you can look at this document, it's  
19 obviously voluminous, but the areas I specifically  
20 want to direct you to are -- I think it's on Page 31  
21 through Page 38.

22 Have you had a chance to review that?

23 A. Yes.

24 Q. Okay. Is this your first time seeing this  
25 document?

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Page 121

1 ERICA J. BEVER

2 Q. And when you say "personal qualities and  
3 character," what are you referring to?

4 A. A variety of things.

5 Q. Such as?

6 A. Again, concern for others.

7 Q. What else?

8 A. Qualities described by recommenders.

9 Q. Anything else?

10 MS. ELLSWORTH: Objection.

11 A. The student's own application materials.

12 Q. Like their academic application materials?

13 MS. ELLSWORTH: Objection.

14 A. I'm referring to their essay, how they  
15 spend their time.

16 Q. In your experience does -- is a student's  
17 race sometimes factored into their personal --

18 MS. ELLSWORTH: Objection.

19 Q. -- into their personal score?

20 MS. ELLSWORTH: Objection.

21 A. No.

22 Q. Do you think that's true with respect to  
23 all readers?

24 MS. ELLSWORTH: Objection.

25 A. I cannot say what other readers do.

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Page 134

1 ERICA J. BEVER

2 A. It does not.

3 Q. "Framing from Drew," do you see that?

4 A. I do.

5 Q. Okay. Do you know what that means?

6 A. I do not.

7 Q. Okay. Do you know who wrote that?

8 A. I do not.

9 Q. Okay. If I represent to you that this  
10 document bears a file name that includes your  
11 initials, do you have any reason to believe that's  
12 inaccurate?

13 MS. ELLSWORTH: Objection.

14 A. I do not.

15 Q. Okay. So is it very possible that you, in  
16 fact, did prepare this document?

17 MS. ELLSWORTH: Objection.

18 A. It is possible.

19 Q. Did you have any other questions with the  
20 report that we've looked at that have come to your  
21 mind today?

22 MS. ELLSWORTH: Objection.

23 A. Could you clarify?

24 Q. Yeah. You said that you can ask questions  
25 based on what you've seen today about this report,

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Page 135

1 ERICA J. BEVER

2 correct?

3 A. Yes.

4 Q. And one of the questions that you raised  
5 was whether or not data was misinterpreted or was  
6 incomplete --

7 MS. ELLSWORTH: Objection.

8 A. Yes.

9 Q. -- correct?

10 Do you have any other questions about that  
11 analysis?

12 A. Those are my most significant questions.

13 Q. Okay. And do you have any basis to believe  
14 that data would have been incomplete?

15 A. Yes.

16 Q. And why is that?

17 A. Because since I have moved to admissions  
18 and financial aid, I have a better understanding of  
19 admissions data.

20 Q. And what in particular do you think you  
21 have an understanding of now that you didn't know  
22 then?

23 A. The process.

24 Q. And what in particular -- how in particular  
25 does that affect the reliability of the data that

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Page 136

1 ERICA J. BEVER

2 OIR would have used in 2013?

3 A. We oversimplified the process.

4 Q. And what do you mean by "oversimplified the  
5 process"?

6 A. So in that analysis we just reviewed only  
7 four ratings were included.

8 Q. And -- and why does that oversimplify the  
9 process?

10 A. There are many other factors we review in  
11 admissions.

12 Q. Such as?

13 A. There are many factors in the admissions  
14 process.

15 Q. When you say only four ratings were  
16 considered, what is your basis for saying only four  
17 ratings are considered?

18 MS. ELLSWORTH: Well, if you're going to  
19 ask questions about the document --

20 MR. STRAWBRIDGE: Feel free to look at it.

21 I want to know why she feels only four  
22 ratings were used in this analysis since she doesn't  
23 remember anything about it.

24 MS. ELLSWORTH: Is that a question to the  
25 witness?

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Page 137

1 ERICA J. BEVER

2 MR. STRAWBRIDGE: Yes.

3 A. I see academic rating, personal rating,  
4 extracurricular rating and athlete.

5 Q. Okay. And what other ratings do you think  
6 are missing from that analysis?

7 A. Many.

8 Q. Like what?

9 A. The interview ratings.

10 Q. You mean ratings from the alumni  
11 interviewers and --

12 A. And staff interviews.

13 Q. And staff interviews.

14 What other ratings?

15 A. Teacher reports.

16 Q. Oh, you mean like the ratings from teachers  
17 or guidance counselors?

18 A. No.

19 Q. What do you mean by -- what do you mean by  
20 teacher reports?

21 A. The recommendation letters of teachers and  
22 guidance counselors.

23 Q. And are those recommendations ever -- ever  
24 distilled to a rating?

25 A. Yes.

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Page 138

1 ERICA J. BEVER

2 Q. Okay. And how is that process done?

3 A. By the reader, and the chair if the file is  
4 passed.

5 Q. Okay. And was that information that would  
6 have been available to OIR at the time that this  
7 these reports were prepared?

8 A. I do not recall.

9 Q. You don't know whether it was or not?

10 A. I do not recall.

11 Q. But you think that a more complete analysis  
12 would have taken those ratings into account?

13 A. I do.

14 Q. And you think -- and that leads to you  
15 question the conclusions in here even though you  
16 don't remember having those questions at the time?

17 A. That is correct.

18 MR. STRAWBRIDGE: Okay. Can I have  
19 Exhibit 24, please.

20 MR. CONNOLLY: Not 45?

21 MR. STRAWBRIDGE: Not 45.

22 (Document marked as Bever  
23 Exhibit 3 for identification)

24 THE WITNESS: Thank you.

25



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Page 143

1 ERICA J. BEVER

2 MS. ELLSWORTH: Objection.

3 A. I am not.

4 Q. Okay. And are you in a position today to  
5 identify any information strengths or weaknesses  
6 about the methodology that was used to create this  
7 document?

8 MS. ELLSWORTH: Objection.

9 A. Yes.

10 Q. And what -- what conclusions can you  
11 provide on that?

12 A. Again, it seems to inaccurately reflect the  
13 process.

14 Q. Okay. When we looked at the prior exhibit,  
15 you said it inaccurately reflects the process  
16 largely because you were concerned it excluded  
17 various ratings that are available in the admissions  
18 database; is that correct?

19 MS. ELLSWORTH: Objection.

20 A. That is correct.

21 Q. So let me direct your attention here to  
22 Page 5.

23 Would you agree with me that Page 5 has a  
24 slide entitled "Difference in Average Test Scores  
25 and Rating for White and Asian Applicants"?

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Page 156

1 ERICA J. BEVER

2 other questions did you have about Exhibit 2 other  
3 than the exclusion of these additional ratings.

4 A. Yeah.

5 Q. So what is it? What are the other concerns  
6 that you have?

7 MS. ELLSWORTH: Objection.

8 If you want to review the exhibit in trying  
9 to answer the question, go ahead.

10 A. It's the same, isn't it?

11 Could you restate your question?

12 Q. Yeah. My question was -- my question is,  
13 is what other questions have you formed today about  
14 the conclusions or the methodology employed in  
15 Exhibit 2 besides --

16 A. And this is Exhibit 2, correct?

17 Q. Correct.

18 A. Okay. Sorry.

19 MS. ELLSWORTH: Objection.

20 A. So again this does not reflect the process  
21 by which we do admissions.

22 Q. And why doesn't it reflect that?

23 A. Because we review many factors, some of  
24 which can be data and some of which are not.

25 Q. Do you believe that Harvard's admissions

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Page 219

1 ERICA J. BEVER

2 MS. ELLSWORTH: Objection.

3 A. Yes, it is.

4 Q. But you're telling us, sitting here today,  
5 under the penalty of perjury, that you don't have  
6 any recollection whatsoever of any discussions about  
7 this apart from one time when Mark Hansen showed you  
8 some slides in your office?

9 MS. ELLSWORTH: Objection.

10 A. That is correct.

11 Q. How many OIR projects of 6 to 12 pages did  
12 you do in a given year?

13 A. Many.

14 Q. Like how many?

15 A. Many.

16 Q. Thousands?

17 A. Possibly.

18 Q. You think you did thousands of these types  
19 of reports in one year?

20 MS. ELLSWORTH: Objection.

21 A. Probably not in one year.

22 Q. Hundreds?

23 A. Possibly.

24 Q. You think you did hundreds of these types  
25 of reports in one year?

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Page 220

1 ERICA J. BEVER

2 A. Yes.

3 Q. Okay. Do you think when we ask Mark Hansen  
4 he's going to say that he doesn't remember any of  
5 this stuff, either?

6 MS. ELLSWORTH: Objection.

7 A. I don't know.

8 Q. Do you think...

9 Do you have any reason as to why you  
10 wouldn't remember the particular reports we've been  
11 looking at?

12 MS. ELLSWORTH: Objection.

13 A. I do not.

14 Q. Do you think they just didn't take up very  
15 much of your time?

16 A. I don't remember.

17 Q. I mean, you remembered a lot of other  
18 reports that you did during this time period,  
19 correct?

20 A. Correct.

21 Q. And you've agreed that the -- the  
22 allegations of racial discrimination are something  
23 that people at Harvard would take pretty seriously,  
24 correct?

25 MS. ELLSWORTH: Objection.

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Page 276

1 ERICA J. BEVER

2 Q. And Hispanic American and low income,  
3 correct?

4 A. Yes.

5 Q. And, in fact, what is the coefficient of  
6 being African American and low income in the Harvard  
7 admissions process?

8 MS. ELLSWORTH: Objection.

9 A. This does not represent the Harvard  
10 admissions process.

11 Q. All right.

12 What does this represent?

13 A. This is a model --

14 Q. Okay.

15 A. -- of an admissions outcome using a limited  
16 data set.

17 Q. What was that data set in particular?

18 A. The variables shown.

19 Q. Well, it's also data drawn from the  
20 admissions database for seven years, correct?

21 A. That is correct.

22 This model doesn't even control for year.

23 Q. Do you remember having -- well, strike  
24 that.

25 Is it your testimony that this model is

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Page 280

1 ERICA J. BEVER

2 white student who is not low income and all other  
3 things being constant. So these are constants as --  
4 or these are variables that, for everything --  
5 holding all other things to their zero, more or  
6 less.

7 Q. So with respect to African-American and low  
8 income, your testimony is that's compared to a white  
9 student who's low income?

10 A. No. That's compared to the constant  
11 student who is -- I'm not sure what the admitted  
12 group in this category is; it looks like white; I  
13 don't see a coefficient for white -- and other  
14 things, non-athlete, a non-personal 1 or 2. A  
15 non-extracurricular 1 or 2.

16 Q. Okay. So does that mean that the  
17 coefficient for African American low income would be  
18 compared to a white student who does not have high  
19 academic extracurricular or personal scores?

20 MS. ELLSWORTH: Objection.

21 A. Again, the way to do that comparison is not  
22 shown on this chart.

23 Q. Okay. But it's something that you're  
24 familiar with?

25 A. It's something I can do statistically.

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Page 362

1  
2 COMMONWEALTH OF MASSACHUSETTS)

3 SUFFOLK, SS. )

4 I, Alexander K. Loos, RDR and Notary Public in  
5 and for the Commonwealth of Massachusetts, do hereby  
6 certify that there came before me on the 13th day of  
7 July, 2017, at 9:00 a.m., the person hereinbefore  
8 named, who was by me duly sworn to testify to the  
9 truth and nothing but the truth of her knowledge  
10 touching and concerning the matters in controversy  
11 in this cause; that she was thereupon examined upon  
12 her oath, and her examination reduced to typewriting  
13 under my direction; and that the deposition is a  
14 true record of the testimony given by the witness.  
15 I further certify that I am neither attorney or  
16 counsel for, nor related to or employed by, any  
17 attorney or counsel employed by the parties hereto  
18 or financially interested in the action.

19  
20 Under Federal Rule 30:

21 \_\_\_\_ Reading and Signing was requested

22 \_\_\_\_ Reading and Signing was waived

23 \_X\_ Reading and Signing was not requested  
24  
25